

C O U N T Y   O F   Y O R K  
COST PARTICIPATION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2002, by and between Wal\*Mart Stores, Inc., hereinafter referred to as the "Developer", and the COUNTY OF YORK, Virginia, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "County",

W I T N E S S E T H:

WHEREAS, the Developer is the owner of certain parcel of land located in the County, hereinafter referred to as the "Property", which is proposed to be developed by the Developer into a project known as "Cedar Valley Retail Center", and the Developer has caused development plans, which show the design and specifications for certain public sewer improvements to be constructed as part of the project, which plans are entitled "Site Development Plan for Cedar Valley Retail Center", dated February 7, 2002, and prepared by Kimley-Horn and Associates, Inc., and which plans are on file in the Department of Environmental and Development Services; and

WHEREAS, as part of the development of the Developer's project, the Developer has submitted plans dated March 2002 and prepared by CEI Engineering Associates, Inc. for the construction of a regional pump station to be known as "Cedar Valley Pump Station" ("the Pump Station"), and which plans (hereinafter referred to as "the Plan") are on file in the Department of Environmental and Development Services; and

WHEREAS, the Developer will submit an application for a Certificate to Construct Sanitary Sewer Facilities and has requested that the County enter into this Agreement, in order to permit the Developer to construct an extension of the County's public sewer system, hereinafter referred to as the "Sewer Facilities", to serve the property;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises, the issuance of the proper permits, the payment of the connection and other fees by the Developer, and the covenants and agreements set out herein, the Developer and County agree as follows:

1. The County hereby agrees to permit the Developer to

construct, without cost to the County (except as with respect to the Pump Station, as set out more fully below), the Sewer Facilities, to the satisfaction of the County, in accordance with the Plan referenced above, the provisions of Chapter 18.1, Sewage Disposal and Sewers, York County Code, the County's Sanitary Sewer Standards and Specifications, and the regulations of all other governmental agencies having jurisdiction over such facilities.

2. The Developer shall pay to the County the following fees:

- a. Inspection fees in the amount of \$225 (\$225 base fee) as required by § 18.1-52, York County Code, to be paid prior to issuance of a Certificate to Construct.
- b. Connection fees as are to be established in a separate agreement for the development of Cedar Valley Retail Center.

3. Upon completion of the construction of the Pump Station in accordance with the Plan, and approval and acceptance of such facilities by the County pursuant to the procedures set out in the County's Sanitary Sewer Standards and Specifications, the Sewer Facilities as shown on the "Plan" shall become the property of the County and the County shall operate and maintain the facilities.

4. Upon acceptance of the Pump Station by the County, the Commonwealth of Virginia Department of Environmental Quality and the State Health Department, the County shall reimburse Wal\*Mart for the construction of the Pump Station minus Wal\*Mart's agreed share of the construction cost of the Pump Station based upon the acreage owned by Developer which will be serviced by the pump station, calculated in accordance with this paragraph. The parties agree that the estimated construction cost of Cedar Valley pump station is \$425,000, and that the Pump Station has been designed to serve 133.5 Acres, at a cost therefore of **\$3,184 per acre**. The parties also agree that the Wal\*Mart site serviced by the Pump Station will comprise 23.5 acres equating to a share of the estimated construction costs of **\$74,824**. Therefore, based on the estimated cost of the Pump Station the County will reimburse Wal\*Mart **\$350,176**. The actual amount to be reimbursed to Wal\*Mart

will be adjusted based on the actual construction cost of the Pump Station. Wal\*Mart shall obtain one or more bids for the construction of the pump station, and shall provide the County with the itemized bid schedules of all contractors submitting bids and copies of all contract and bid documents. Should the actual cost of the station exceed 115% of the estimated amount then this Agreement shall become void and a new agreement shall be negotiated.

5. All contractors utilized by the Developer in installing the Sewer Facilities shall be approved by the County prior to issuance of a Certificate to Construct Sanitary Sewer Facilities.

6. Developer agrees to indemnify, protect and save harmless the County, its officers, agents, and employees, from and against all losses and damage to property and bodily injury or death to any person or persons, which may arise out of or be caused by the construction, maintenance and presence of the Sewer Facilities, until such time as accepted by the County.

7. To ensure the indemnification of the County against any liability arising out of the construction of the Sewer Facilities by the Developer, there is attached hereto a certificate of public liability insurance in the amount of \$1,000,000 for bodily injury and \$500,000 for property damage, including underground property, per occurrence, or insurance of equivalent coverage as approved by the County as being sufficient. The certificate shall include a governmental endorsement thereto naming the County, its officers, agents, and employees, as an additional insured, issued by an insurance company licensed to do business in the Commonwealth of Virginia. Such insurance shall include Worker's Compensation and Employer's Liability as follows: Coverage A - Statutory Requirement; Coverage B - \$100,000 per occurrence; Coverage C - \$100,000/\$100,000 Accident and/or Disease. If vehicles are to be used on County-owned property, the insurance shall include comprehensive automobile liability, including owned, non-owned and hired car coverage in the amount of \$500,000 per occurrence bodily injury, and \$100,000 property damage. Lapse, cancellation or termination in any manner of coverage prior to completion and

acceptance of the Sewer Facilities shall constitute a violation of this Agreement.

8. No permits to begin construction, including the Certificate to Construct Sanitary Sewer Facilities, will be issued by the County prior to execution of this Agreement.

9. It is mutually understood and agreed that approval of the plans shall not, by such approval alone, be deemed to be an acceptance by the County or other applicable agency of any sewer or other physical improvements shown on the Plans for maintenance, repair or operation thereof, and that the Developer shall be fully responsible therefor and assume all of the risks and liabilities therefor, until such time as the County or other applicable agency has formally accepted them. Upon acceptance of any of the improvements to be dedicated to the County, Developer agrees to execute a maintenance and indemnifying bond, guaranteeing the materials and workmanship of the improvements for one year, which bond shall be executed by corporate surety.

10. This Agreement shall be binding upon the Developer and the Developer's successors and assigns.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals:

Wal\*Mart Stores, Inc.

By: \_\_\_\_\_

\_\_\_\_\_  
(Print name and title)

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
County Attorney

Date:

COUNTY OF YORK, VIRGINIA

By: \_\_\_\_\_  
County Administrator

Date: \_\_\_\_\_